

REMARKS

Claims 7-9, 12-13, 16-17, 19-22 and 24-26 are currently pending. Claims 19-22 and 24 stand withdrawn, claims 1, 6, and 11 are canceled, and claims 7, 9, 12-13, 16-17, 25 and 26 are amended herein. Applicant respectfully requests that the Examiner reconsider all rejections in the outstanding Office Action in view of the foregoing amendments and the following remarks.

The Amendments

Canceled claims 1, 6 and 11 correspond to claims in parent issued U.S. Patent No. 6,344,217. Claims 7-9, 12, 16-17 and 25 are amended herein to incorporate the limitations of canceled claims from which they previously depended. Claims 9 and 26 have been amended to replace "especially" with "including" which is suitable Markush language, and claim 13 has been amended to correct obvious typographical errors. Claim 26 is amended for consistency with claim 9 from which it depends. The amendments do not change the scope of the claims, and the subject matter of these claims as amended is fully supported in the originally filed claims. No new matter is introduced as a result of the amendments, and therefore, Applicant respectfully requests that these amendments be entered in the subject application.

Rejection under 35 U.S.C. § 112, Second Paragraph

Claims 6, 9, 11, 13 and 26 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection is overcome by the present amendments.

Claims 6 and 11 being canceled herewith, rejection of these claims is moot. Claims 9 and 26 have been amended to replace "especially" with "including" to make clear that the lists in these claims are Markush groups. Upon correction of obvious typographical errors, claim 13 is clear. The Examiner has correctly identified that "vital lymphocytes" refers to lymphocytes *in vivo* which are alive, and "clear activation" is defined within the claim by listing of nine assay targets whose values are all lowered upon activation of the organs. Applicant respectfully submits that the skilled person will readily recognize an increase in transcription-factor-dependent metabolic activity of osteoblasts upon administration of putamen ovi as recited in claim 16. Claim 26 is amended herein to more clearly recite Markush groups. In view of the present amendments, Applicant respectfully submits that the claims now particularly point out and distinctly claim the subject matter which applicant regards as the invention. Therefore, it is

respectfully requested that the rejection of claims 9, 11, 13 and 26 under 35 U.S.C. § 112, second paragraph, be withdrawn.

Rejection under 35 U.S.C. § 112, First Paragraph

Claims 7-8, 13, 16, 17 and 25-26 stand rejected under 35 U.S.C. § 112, first paragraph, on the grounds that the specification does not provide reasonable enablement for the physiological responses recited in the claims. This rejection is respectfully traversed

The Office Action asserts that “the claims require that the practice of the claimed method result in specific physiological responses such as an increase in the cell numbers of leukocytes, thrombocytes, erythrocytes and reduction in plasma levels of creatinine, uric acid, and glucose, etc.”, but that the application “fails to provide evidence of physiological results recited in the claims other than ... increases in polymorphonuclear granulocytes and suppressor lymphocytes, as well as reductions in creatinine, bilirubin, cholesterol and triglycerides.”

However, under U.S. Rules of Practice, the Office must provide reasons why the specification is not enabling. Without such affirmative reasoning, the Office is required to accept that the specification is enabling and, thus, should not reject the claims on that premise. The Office Action merely relies on general statements of insufficient support in the specification to reject the claims. Although pointing to a few specific instances where particular examples in the specification showed no change in certain parameters rather than the increase recited in the claims, the Office Action provided no reasoning why the skilled person would not expect most other occasions of administration of putamen ovi to produce the effects taught in the specification for these same parameters. In general, the Examiner’s argument is based on no more than absence of any data related to the specific physiological effect. In the absence of specific contrary information, the Office is required to accept the assertions in the application that the invention is operable as described.

Applicant respectfully asks the Examiner to provide particular reasons why the skilled person would doubt the teaching of the specification regarding physiological response to therapy according to the present invention. In the absence of such particular reasoning, Applicant respectfully requests that the rejection under 35 U.S.C. § 112, first paragraph, be withdrawn.

Double Patenting Rejection

Claims 1, 6, and 11 stand rejected under 35 U.S.C. § 101 as claiming the same invention as claims 1, 6, and 8 of U.S. Patent No. 6,344,217. Claims 1, 6, and 11 having been canceled by this amendment, this rejection is moot.

CONCLUSION

Applicant respectfully submits that this application is in condition for allowance, and such disposition is earnestly solicited. Should the Examiner believe anything further is desirable in order to place the Application in even better condition for allowance, the Examiner is invited to contact the Applicant's undersigned representative.

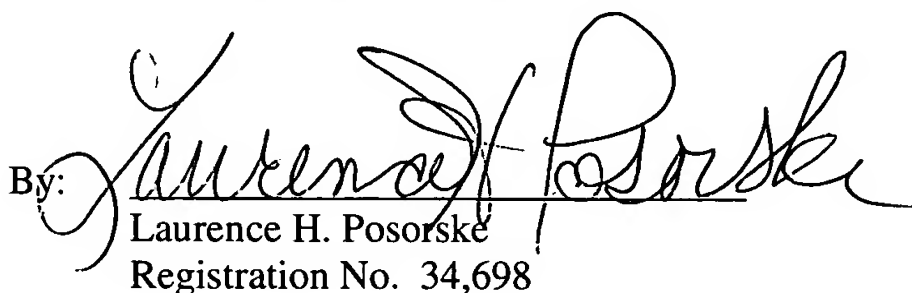
Respectfully submitted,

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